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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,225	07/15/2003	Lisa J. Cox	49278.0001.8	8523
26158	7590	04/29/2004	EXAMINER	
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC			BENNETT, GEORGE B	
P.O. BOX 7037			ART UNIT	
ATLANTA, GA 30357-0037			PAPER NUMBER	
			2859	

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/620,225	COX ET AL.	
	Examiner	Art Unit	<i>dt</i>
G. Bradley Bennett	2859		

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 15 July 2003.

2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-26 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-26 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 15 July 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All    b) ☐ Some \* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2.

4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "instructions" (claim 17) and the "video format" (claim 18) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 6 and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schuette, Jr. et al. (Schuette).

4. Schuette discloses the invention as claimed where: **58** is a substantially transparent plate; **64** is a level on the plate which also functions as a handle; and the tool is in an orientation for marking a polygon, which is a rectangle.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 4, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette in view of White.

7. Schuette discloses the invention substantially as claimed. However, Schuette does not disclose a second level or series of graduated markings on the sides as claimed. White discloses how a measuring and marking tool can be provided with two levels for the purpose of checking to see if the tool is level in a plurality of orientations. White also discloses how graduations may be used on two edges for the purpose of making measurements using either of the two edges. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use plural levels as taught by White in conjunction with the Schuette device for the purpose of using the Schuette device in a plurality of orientations. It also would have been obvious to one of ordinary skill in the art at the time the invention was made to use graduations as taught by White in conjunction with the Schuette device to permit a person to make measurements with the Schuette device.

8. Claims 8-10 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette in view of Barr.

9. Schuette discloses the invention substantially as claimed. However, Schuette does not disclose marking material as claimed. Barr discloses how a marking material **14** can be used with ink or paint for the purpose of printing a pattern on a surface. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use making materials as taught by Barr in conjunction with the Schuette device for the purpose of using the Schuette device to print patterns on a surface.

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette in view of Johansen et al. (Johansen).

11. Schuette discloses the invention substantially as claimed. However, Schuette does not disclose concave surface as claimed. Johansen discloses how a concave surface can be used with measuring device for purpose of elevating a substantial part of the device above a surface (see FIG 2, for example). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a concave surface as taught by Johansen in conjunction with the Schuette device for the purpose of using the Schuette device to print patterns on a surface.

12. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette in view of Trane et al. (Trane).

13. Schuette discloses the invention substantially as claimed. However, Schuette does not disclose a handle specifically as claimed. Trane discloses how a handle **15** with a finger recess can be used with a measuring device for the purpose of holding the measuring device. Therefore, it would have been obvious to one of ordinary skill in the

art at the time the invention was made to use the handle as taught by Trane in conjunction with the Schuette device as an alternative means for holding the Schuette device.

14. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette in view of Greer.

15. Schuette discloses the invention substantially as claimed. However, Schuette does not disclose the diamond shape or two plate portions as claimed. Greer discloses how two plates may be adjustably connected to form diamond, square or rectangular patterns. can be used with a measuring device for the purpose of holding the measuring device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the plates as taught by Greer in conjunction with the Schuette device for the purpose of rendering the Schuette device more versatile and adjustable.

16. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette in view of Innis.

17. Schuette discloses the invention substantially as claimed. However, Schuette does not disclose the instruction materials as claimed. Innis discloses how video instructions may be used for the purpose of assembling something (see col. 3, ll. 43-46). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the instructions as taught by Greer in conjunction with the Schuette device to provide instructions for how to use the Schuette device.

18. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette and Innis as applied to claim 17 above, and further in view of Barr.

19. Schuette and Innis disclose the invention substantially as claimed. However, neither Schuette nor Innis disclose marking material as claimed. Barr discloses how a marking material **14** can be used with ink or paint for the purpose of printing a pattern on a surface. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use making materials as taught by Barr in conjunction with the Schuette device for the purpose of using the Schuette device to print patterns on a surface.


20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to G. Bradley Bennett whose telephone number is 571.272.2237. The examiner can normally be reached on M-TH 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on 571.272.2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2859

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
G. Bradley Bennett  
Primary Examiner  
Art Unit 2859

gbb  
27 APR 2004